

REMARKS

The above listed claim amendments along with the following remarks are fully responsive to the Office Action set forth above. In that Office Action, the Examiner rejected claims 28-34. By this Amendment and Response, claim 28 is amended, and claim 29 is canceled. No new matter has been added. Claims 28 and 30-34 are currently pending.

Claim Rejections – 35 USC § 103(a)

Claims 28-34 stand rejected under 35 U.S.C. §103(a) based on U.S. Patent 6,508,756 (“Kung”) in view of U.S. Patent 4,957,477 (“Lundback”). The Office Action asserts, in part, that the purpose of using radiopaque material, as taught by the Lundback patent, is self-evident. The Office Action further states that the Kung patent teaches that the disclosed device can be initially positioned on the heart without a thoracotomy, and that the use of radiopaque materials would facilitate this process.

Without acquiescing and reserving all rights, the Applicant has amended claim 28 to more particularly point out and distinctly claim the subject matter of the claimed invention. Specifically, claim 28 as amended recites a jacket constructed from a biomedical material, said biomedical material being elastic and radiopaque, and said jacket having a predetermined size selected to surround an external surface of said heart. The Applicant respectfully submits that this combination is neither taught nor suggested by the Kung and Lundback patents, either alone or in combination.

The Kung patent discloses a girdle for limiting the maximum diastolic dimension of the heart while offering no resistance to systolic ejection. In the Kung patent, a number of interlinked two-dimensional loops, i.e., the lightweight plastic rings 133, are interconnected to form the girdle. No materials for the rings other than “plastic” are disclosed. Moreover, the girdle presents no systolic load to the contracting heart. None of these features of the disclosed girdle teach or suggest the use of materials in the girdle having elastic characteristics. The Kung patent therefore discloses neither elastic nor radiopaque materials for the disclosed girdle.

Furthermore, the Lundback patent is directed to a cardiac assist device in which a fluid-filled sac is placed around all or part of the heart. The Lundback patent discloses that the device can be at least partially made from a pliable material, but does not disclose or suggest that this material is also elastic. To the contrary, with the device of the Lundback patent, support to the heart is provided by the fluid contained within the sac, which fluid is compressed as the heart expands, for example, during diastolic filling. There is no teaching or suggestion in the Lundback patent that the material of the jacket itself is elastic.

Accordingly, the Kung and Lundback patents fail to disclose or suggest, either alone or in combination, a jacket constructed from a biomedical material, said biomedical material being elastic and radiopaque. Claim 28 as amended is thus believed to be patentable over the cited prior art of record. Additionally, because claims 30-34 depend from claim 28, those claims are also believed to be patentable for at least the same reasons.

The Applicant respectfully requests that a Notice of Allowance be issued in this case.

Respectfully Submitted,

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